

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF VIRGINIA Alexandria Division

UNITED STATES OF AMERICA

v.

No. 1:14-CR-306 - GBL

MANUEL ERNESTO PAIZ GUEVARA,
Defendant

MEMORANDUM IN SUPPORT OF DEFENDANT’S
MOTION FOR IMMEDIATE TENDER OF RULE 404 (B) MATERIALS

DEFENDANT has requested immediate tender of Rule 404 (b) materials upon which the United States intends to rely during any aspect of the trial.

The issue is relatively uncomplicated and well established.

The Notes of Advisory Committee on Rules – 1991 Amendment states:

“The amendment to Rule 404 (b) adds a pretrial notice requirement in criminal cases and is intended to reduce and promote early resolution on the issue of admissibility.”

While there is ample authority for the request, the timing of tender or disclosure is not specifically indicated. However, the 1991 Amendment does go on to state “Other than requiring pretrial notice, no specific time limits are stated in recognition that what constitutes a reasonable request or disclosure will depend largely on the circumstances of each case.”

Defendant would assert given the number of defendants being tried jointly and the alleged involvement of all defendants in the activities of MS-13, a notoriously and widely published violent gang, evidence of prior bad acts by the gang, as a whole, and evidence of prior bad acts by other defendants made run afoul of the purposes for rule 404 (b), those purposes are: conviction of a defendant merely or simply because that defendant is possessing of bad character; to protect defendants from being tried by juries for prior acts rather than the charged conduct, and, to protect against “trial by ambush” which could occur at trial should a defendant be confronted with acts not only alleged in the indictment, but prior acts which could span the entire life of the defendant. See *Michelson v. United States*, 335 U.S. 469 (1948) and *United States v. Queen*, 132 F. 3rd 991 (4th Cir. 1997).

The foregoing motion should be, in all things, granted and a date and time for tender made to enable the defendant to address any allegations of 404 (b) conduct.

Respectfully submitted,

MANUEL E. PAIZ GUEVARA

By: _____/S/_____

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned HEREBY CERTIFIES that the above and foregoing was electronically filed on July 23, 2015, with the Clerk of the Court using the CM/ECF system, to be served electronically upon counsel for all defendants and the Office of the United States Attorney for the Eastern District of Virginia, Alexandria Division.

/S/ David P. Baugh

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